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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

12 **BRIAN FIORE,**

13 Petitioner,

16-cv-00282-VC

14 v.

**RESPONDENT'S CASE MANAGEMENT  
STATEMENT**  
15 AND ORDER

16 **DWIGHT NEVEN, Warden,**

17 Respondent.

19 Pursuant to Civil L.R. 16-9, respondent submits this Case Management Statement.<sup>1</sup> We  
20 respectfully ask this Court to issue an order with the following directives: (1) grant petitioner's  
21 request to hold the federal habeas petition in abeyance pending exhaustion in state court; (2) order  
22 petitioner to notify the Court within 30 days after exhaustion is complete; and (3) order  
23 respondent to file a response within 60 days after that notification.

24 In addition, because there is no dispute about the appropriate next steps, the parties are in  
25 agreement that no appearance at a Case Management Conference on July 26, 2016, is necessary.

26 <sup>1</sup> Petitioner filed a Case Management Statement on July 15, 2016, before the case was  
27 assigned to a Deputy Attorney General, as the deputy who had handled this case in state court has  
28 retired. The undersigned Supervising Deputy Attorney General has now been assigned to  
represent respondent in this case.

1           On January 18, 2016, petitioner filed a timely federal habeas petition and an application to  
 2 hold the petition in abeyance pending exhaustion of two issues in state court. Docs. 1, 2.  
 3 Petitioner has already commenced the exhaustion process by filing a habeas petition in superior  
 4 court on January 15, 2016. Doc. 2, Exh. A. Because the superior court petition tolls the statute,  
 5 28 U.S.C. § 2244(d)(2), respondent does not oppose petitioner's application to hold the mixed  
 6 petition in abeyance pending exhaustion in state court.

7           Once the exhaustion process is completed, petitioner should be required to notify the Court  
 8 within 30 days of the filing of the final state court order disposing of his claims. Respondent  
 9 should then be required to file a responsive pleading, in the form of either a motion to dismiss or  
 10 an answer on the merits, within 60 days of the notification. Respondent believes this will provide  
 11 the most expeditious way to provide the Court with briefing in this case.

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13 Dated: July 19, 2016

Respectfully submitted,

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KAMALA D. HARRIS  
Attorney General of California

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/s/PEGGY S. RUFFRA

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PEGGY S. RUFFRA

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Supervising Deputy Attorney General  
Attorneys for Respondent

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SF2016400725       \*\*If the state court petition is not resolved within 6 months the parties must file a joint  
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status report. The status report is due no later than January 27, 2017. The Court otherwise  
 22 adopts the proposed schedule and vacates the case management conference scheduled for

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July 26, 2016.

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27 Date: July 26, 2016

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